

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the New and Emerging)	WC Docket No. 08-171
Technologies 911 Improvement Act of 2008)	

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

I. Introduction and Summary

The United States Telecom Association (USTelecom) files these reply comments on behalf of its member companies to urge the Commission to tailor its rulemaking to the “limited purposes”¹ of the New and Emerging Technologies 911 Improvement Act (the NET 911 Act). These limited purposes, as provided by Congress, are to give IP-enabled voice service (VoIP) providers parity of access to the capabilities currently provided to commercial mobile service (CMS) providers in the provision of 911 and enhanced 911 (E-911) services² and access to any additional capabilities that are unique to VoIP and “needed to transmit, deliver, and complete 911 and E-911 calls and associated E-911 information.”³

Congress put Commission regulations on a fast track, presumably in recognition that the NET 911 Act does not require an elaborate set of rules. Congress was well aware that significant progress in providing E-911 had been made in the marketplace by VoIP providers that had “entered into commercial arrangements with LECs or third parties to gain access to 911

¹ H.R. Rep. No 110-442 at 13.

² See Comments of the Illinois Commerce Commission at 1 (“The ICC views this principle of parity as one central to the Act, which should guide the rulemaking decisions ultimately adopted by the Commission.”).

³ H.R. Rep. No 110-442 at 13.

components.”⁴ The NET 911 Act did not abrogate or change those commercial arrangements.⁵ Instead, it asked the Commission to formulate regulations consistent with them and with industry’s settled expectations of what “core capabilities”⁶ are required to deliver today’s E911 services to consumers. The Commission can promulgate sound regulations within the time frame provided under the NET 911 Act by building on the record of success in the deployment of CMS, which is reflected in current industry practices, and by eschewing the calls for elaborate and unnecessary command and control regulation of the delivery of E-911 capabilities, which would run counter to Congressional intent.

II. The Commission’s regulations should be based on existing commercial practices and the consensus in the industry.

USTelecom’s review of comments suggests that there is consensus on the core capabilities that are required. Where consensus has not emerged in the comments, this reflects that the “capability” that has not been accepted throughout the E911 community and hence is not a “core capability.”⁷ In promulgating regulations, the Commission should remain mindful of this consensus model and avoid prescriptive regulations that will stymie or retard the continuing development of cooperation, reasonable commercial arrangements, and voluntary industry standards. As another commenter put it, “the single most important aspect to rules adopted in support of the NET 911 Act must be to ‘do no harm’”. Progress has been made in interfaces to 911

⁴ *Id.* at 6.

⁵ *See id.* at 13.

⁶ *See* NENA and APCO Comments at 5.

⁷ *See, e.g.,* NENA and APCO Comments at 7-8 (discussing differing views regarding whether p-ANIs should be provided directly to VoIP service providers and determining not “to offer support for one approach over another”).

by both CMS and VoIP providers and care must be taken to not prescribe solutions that will be restrictive on that progress.”⁸

However, some commenters are asking for the Commission to prescribe solutions without even demonstrating that problems exist. Despite the fact that there is no evidence that parties have been unable to come to commercial agreement on reasonable rates, terms, and conditions for access to ILEC capabilities needed to provide E911 service, commenters have asked the Commission to set rates.⁹ Congress could not have contemplated that the Commission should undertake this Herculean regulatory effort when it set the 90-day clock for the Commission to issue regulations. More importantly, that was not what Congress told the Commission to do. Congress gave VoIP providers “a right of access to such capabilities, including interconnection, to provide 9-1-1 and enhanced 9-1-1 service on the *same rates, terms, and conditions* that are provided to a provider of commercial mobile service.....”¹⁰ These rates, terms, and conditions are set in the marketplace, and there is no evidence in the record that they are not commercially reasonable.

It is equally absurd to suggest, as some commenters do, that the Commission should require LECs to post their rates with the Commission in order to ensure “transparency.”¹¹ As AT&T explains, when its ILECs provide these capabilities to CMS providers they do so by means of “agreements memorialized as appendices to state-approved interconnection agreements that ... often incorporate or reference the rates, terms and conditions listed in AT&T’s ILEC tariffs for specific AT&T provided 911/E911 facilities (e.g., direct 911 trunking, selective router access,

⁸ Comments of the Washington State E911 Program at 1.

⁹ See, e.g. Comments of Comcast at 8; Vonage Comments at 22. There is no need to undertake rate regulation, as Comcast suggests, to “replicate the rates that a competitive market would produce” without any evidence of market failure. See Comcast Comments at 8.

¹⁰ NET 911 Act, § 101(2)(b) (emphasis added).

¹¹ See, e.g., Vonage Comments at 22.

etc.).”¹² These are publicly available documents. Requiring LECs to file their rates with the Commission would be unprecedented, burdensome, and unnecessary.

III. The Commission’s regulations should focus on current E911 capabilities as required by the Net 911 Act, rather than on capabilities that might be used in the future for next generation networks.

It is crucial that the Commission focus on current E911 capabilities, as required by the NET 911 Act, and work cooperatively with the National E-911 Implementation and Coordination Office (ICO), which is reporting to Congress on the next generation networks for the provision of 911 services. It would be contrary to the intent of the Act to promulgate regulations that reached next generation capabilities. As one commenter cautioned, “The Commission ... should be wary of IP-enabled service provider requests for functionalities that are not necessary for these providers to furnish their customers access to 911 calling capabilities.”¹³ The Commission should instead ask whether the capability is necessary for the requesting party to “transmit, deliver, and complete 911 and E-911 calls and associated E-911 information.”¹⁴ Where it is instead a capability that would possibly be helpful in the future provisioning of next generation networks, the Commission should recognize that the capability is outside the scope of this rulemaking and subject to evolving standards that would make requiring such a capability problematic and counterproductive.

IV. The Commission’s regulations should be consistent with the presumptions established by the NET 911 Act.

¹² AT&T Comments at 6; *accord* Verizon Comments at 7.

¹³ Comments of Intrado Inc. and Intrado Communications Inc, at 4. *See also* H.R. Report No. 110-442 at 13.

¹⁴ H.R. Rep. No 110-442 at 13.

The guiding principle of the NET 911 Act is that the Commission's regulations should provide VoIP providers parity with CMS to access to capabilities necessary for the transmission, delivery, and completion of 911 calls. Thus, the presumption is that a capability will be provided to the extent that it is currently available to CMS providers.

If a VoIP provider seeks access to a capability not currently provided to CMS, it bears the burden of establishing that this capability is necessary for it to transmit, deliver, and complete E-911 calls. This is the natural reading of the NET 911 Act. It is absurd to suggest, as Comcast does, that a provider of E-911 should be required to provide any capability that a VoIP provider can dream up while a dispute is pending over that capability, rather than requiring the party demanding this capability to demonstrate before it is provided that the VoIP provider genuinely needs it to transmit, deliver, or complete E-911 calls.¹⁵ What Comcast proposes would reverse the natural presumptions created by the NET 911 Act and unsettle commercial expectations.

V. Conclusion

The old adage, "if it ain't broke, don't fix it" applies with great force to this rulemaking. VoIP providers are successfully complying with the Commission's requirements. The Commission should ensure that the regulations it writes to implement the NET 911 Act facilitate the current E911 environment. This will best be accomplished by writing straightforward regulations that provide clear and circumscribed guidance to achieve parity in the continued successful implementation of E911 services to consumers.

¹⁵ See Comcast Comments at 5.

Respectfully submitted,



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September 17, 2008